NG KOOK KIN

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, JOHOR BAHRU
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK J
[CRIMINAL REVISION NO. 43-4-1994]
22 DECEMBER 1994

JURISDICTION: *Applicant charged for offence under Peraturan-Peraturan Pemasaran Ikan 1973, Reg. 4A(3) - Offence punishable under Lembaga Kemajuan Ikan Malaysia Act 1971 - Applicant convicted and fined by Magistrate's Court - s. 20 Act 1971 gives jurisdiction to Sessions Court - Whether wording in s. 20 Act 1971 couched permissively to include Magistrate's Court - Whether Magistrate's Court has jurisdiction to dispose of the case.*

The applicant had pleaded guilty to a charge under regulation 4A(3) of the Peraturan-Peraturan Pemasaran Ikan, 1973 punishable under Lembaga Kemajuan Ikan Malaysia Act 1971 (Act 1971) and was duly convicted and fined by the Magistrate's Court and the proceeds of the sale of two hundred kilograms of fishes and a motor van were duly forfeited to Revenue. The applicant then applied to the High Court for a revision of the order passed by the Magistrate on the ground that only the Sessions Court has jurisdiction to hear and dispose of the case. Section 20 of Act 1971 stated that a Sessions Court in West Malaysia and the Court of a Magistrate of the First Class in East Malaysia shall have jurisdiction to try any offence under the Act and to award full punishment for any such offence. It was argued by the learned Deputy Public Prosecutor that the Magistrate's Court had jurisdiction to handle the case by virtue of s. 20 of Act 1971 which was couched permissively and not obligatorily.

Held:

[1] In the context of s. 20 of Act 1971, the word "shall" appearing therein reflects a measure of mandatoriness. Only the Sessions Court is vested with the jurisdiction to hear and dispose of the applicant's case for the simple reason that only the Sessions Court is empowered to award the full punishment for such an offence.

[2] It is quite normal to determine the intent of the law for the Court to look at a sentence from a purely grammatical point of view so that in construing a statute the Court will disregard a punctuation or will re-punctuate it if that be necessary, in order to arrive at the true purpose and natural meaning of the words employed. In construing s. 20 of Act 1971, there is no need to disregard a punctuation or to re-punctuate it as the words employed therein are clear and unambiguous.

Obiter dicta:

When the Court is exercising its revisionary powers; the Judge sitting alone is empowered to pry and go deeper into the whole of the case without being shackled by the matters raised by both parties and no party has the right to be heard in a revision except with the permission of the Judge. However, the Judge will not make a final order to the prejudice of any party without giving that party an opportunity of being heard.

There is a mistake in regard to the Peraturan-Peraturan and the Act as specified in the charge which should read Peraturan-Peraturan Pemasaran Ikan 1973 and Akta Lembaga Kemajuan Ikan Malaysia 1971. A charge property drafted as a notice to the offender of the matter with which he is accused of. It must be drafted with clearness and certainty. Prosecuting officers should adhere closely as possible not only to the wording of the statute but also be doubly

sure as to the name of that statute and Magistrates too are advised to see that this is done. All these pre-requisites are important if one bears in mind that a charge so framed is an information to the Court which is trying the offenders. However, the charge in the present form is not prejudicial to the applicant.

[Conviction and sentence imposed by Magistrate's Court quashed; orders for forfeiture set aside and case transferred to Sessions Court for disposal].

Cases referred to:
PP v. Kulasingam [1974] 2 MLJ 26 ***(refd)***
Yan Wing Lee v. PP [1994] 2 CLJ 453 ***(refd)***
R v. Mohamed Humayoon Shah [1874] 21 WR Co. 72 ***(refd)***
PP v. Lim Yoo Hock [1984] 1 MLJ 309 ***(refd)***
Tan Peng Ann v. PP [1949] MLJ Supp. 10 ***(refd)***
Liow Min Poh v. PP [1962] MLJ 316 ***(refd)***
Khoo Kay Jin v. PP [1964] MLJ 22 ***(refd)***
Ratnasamy v. PP [1948] 14 MLJ 161 ***(dist)***
Duport Steels v. Sirs [1980] 1 ALL ER 529 ***(refd)***
David v. De Silva [1934] AC 106 ***(refd)***
O'Connor v. Issacs [1956] 2 QB 288 ***(refd)***
Sussex Peerage Claim [1844] 11 Cl. & F 85 ***(refd)***
Cargo ex Argos [1873] LR 5 PC 134 ***(refd)***
Manchester Corporation v. Connolly [1970] 1 ALL ER 961 ***(refd)***

Legislation referred to:
Akta Lembaga Kemajuan Ikan Malaysia 1971, s. 20
Courts of Judicature Act, 1964, s. 36
Criminal Procedure Code (FMS Cap. 6), ss. 152 - 156, 326
Customs Act 1967 (Act 235), s. 128(3)
Excise Enactment 102 (9 of 1930 as amended by 16 of 1931), s. 55
Ordinance No. 3 of 1946, ss. 18, 20, 21
Peraturan-Peraturan Pemasaran Ikan 1973, reg. 4A(3)

For the applicant - Ong Kow Meng; M/s. K.M. Ong & Co.
For the respondent - Iskandar Shan bin Ibrahim, DPP

JUDGMENT

Hj. Abdul Malik bin Hj. Ishak J:

This is a revision initiated by the applicant's Counsel in regard to the order passed by the Magistrate, Magistrate's Court, Johor Bahru, Johor ("the Magistrate's Court") wherein the applicant had pleaded guilty to a charge under reg. 4A(3) of the Peraturan-Peraturan Pemasaran Ikan 1973 ("Peraturan 1973") and punishable under the Lembaga Kemajuan Ikan Malaysia Act 1971 ("Act 1971"). The Magistrate's Court duly convicted the applicant and fined him RM2,000 in default six (6) months' imprisonment. The proceeds of sale of two hundred (200) kilogrammes of fishes (P2) were forfeited to Revenue while motor van bearing registration number JCG 3015 (P3) also met with the same fate.

I have since called for the record of proceedings to determine the correctness and legality of the order passed by the Magistrate's Court and, at the same time, to determine the regularity of the proceedings. Hashim Yeop Abdullah Sani J (as he then was) succinctly said in *PP v. Kulasingam* [1974] 2 MLJ 26 that:

> The object of revisionary powers of the High Court is to confer upon the High Court a kind of 'paternal or supervisory jurisdiction' in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether any order made by the lower Court should be interfered with in the interest of justice.

The main plank of the applicant's Counsel's argument is in regard to the jurisdiction of the Magistrate's Court to hear and dispose of the case. Counsel relies on s. 20 of Act 1971 and argues that only the Sessions Court has the jurisdiction to hear and, consequently, dispose of the case.

It is germane to mention, at the outset, that in revisionary capacity, the Judge sitting alone is empowered to pry and go deeper into the whole perspective of the case without being shackled by the matters raised by both parties. By s. 326 of the Criminal Procedure Code (FMS Cap. 6) ("CPC") no party has the right to be heard in a revision except with the permission of the Judge and the permission, if granted, will be in the context of s. 36 of the Courts of Judicature Act 1964 which reads as follows:

> Subject to any written law for the time being in force no party shall have any right to be heard before the High Court when exercising its power of revision and supervision:
>
> Provided that no final order shall be made to the prejudice of any person unless the person has had an opportunity of being so heard.

What is abundantly clear in a revision is this, the Judge will not make a final order to the prejudice of any party without giving that party an opportunity of being heard. *Yan Wing Lee v. PP* [1994] 2 CLJ 453; [1994] MMD January issue at p. 55, is authority for the proposition that any order made by a Judge on revision cannot be the subject of an appeal and the order shall be deemed to be a final order and is, therefore, subject to the proviso to s. 36 of the Courts of Judicature Act 1964.

Having appraised the law on revision, it is now appropriate to set out the charge which the applicant had to face in the Magistrate's Court and it is as follows:

> Bahawa kamu pada 22 Mei 1992, jam lebih kurang 4.30 pagi di pintu masuk Tambak Johor dalam Daerah Johor Bahru di dalam kawasan Kawalan Pemasaran Ikan mengikut Warta Kerajaan PU(B) 52, tanpa lesen untuk mengimport ikan yang dikeluarkan oleh Lembaga Kemajuan Ikan Malaysia telah didapati mengimport ikan sebanyak kira-kira 200 kg. dengan menggunakan motor van No. JCG 3015. Dengan ini kamu telah melakukan satu kesalahan di bawah Peraturan 4A(3) Peraturan-Peraturan Pemasaran Ikan (Pindaan) 1988 dan boleh dihukum di bawah seksyen 17(1) Akta Lembaga Kemajuan Ikan Malaysia (Pindaan) 1973.

It is obvious that there is a mistake in regard to the Peraturan-Peraturan and the Act as specified in the charge. The correct Peraturan-Peraturan is Peraturan-Peraturan Pemasaran Ikan 1973 and the correct Act should be Akta Lembaga Kemajuan Ikan Malaysia 1971. There is therefore a lack of precision in the charge, a set back which should not occur at all if the prosecution were to be meticulous in their work. A charge properly drafted serves as a notice to the offender of the matter with which he is accused of. It must be drafted with clearness and certainty. Prosecuting officers are reminded that they should adhere closely as possible not only to the wording of the statute but also be doubly sure as to the name of that statute and Magistrates too are advised to see that this is done. All these pre-requisites are important if one bears in mind that the charge so framed is an information to the Court which is trying the offender (*R v. Mohamed Humayoon Shah* [1874] 21 WR Co. 72 and *PP v. Lim Yoo Hock* [1984] 1 MLJ 309). Sections 152 to 156 of the CPC are the relevant provisions on form of charges and if adhered to would lead to smoothness in prosecutions. However, the charge in the present form as set out above is not prejudicial to the applicant unlike the charges in

Tan Peng Ann v. PP [1949] MLJ Supp. 10, *Liow Min Poh v. PP* [1962] MLJ 316 and *Khoo Kay Jin v. PP* [1964] MLJ 22 where the Courts there held that the charges were inadequate and defective as they did not disclose how the deception was practised by the offenders.

So much for the charge. Now to the crux of the matter.

Section 20 of Act 1971 enacts as follows:

> Notwithstanding anything to the contrary in any other written law, a Sessions Court in West Malaysia and the Court of a Magistrate of the First Class in East Malaysia, shall have jurisdiction to try any offence under this Act or under any rule made thereunder, and to award full punishment for any such offence.

The learned Deputy Public Prosecutor sought to draw a parallel with *Ratnasamy v. PP* [1948] 14 MLJ 161 where the appellant there was convicted for storing 20 quarts, 12 pints and 19 pegs of intoxicating liquor at a place other than that specified in his licence, namely at No. 4, Jalan Gunong, Bekok between 3 and 6 December 1947 and he was fined RM75 or in default one month R.I. before the Magistrate. It was argued by the appellant on appeal there that the Court of a Magistrate had no jurisdiction to try the case as s. 55 of the Excise Enactment 102 (9 of 1930 as amended by 16 of 1931) categorically stated that all prosecutions under the Enactment may be had before the Court of a Magistrate of the First Class which may impose any penalty provided by the Enactment, anything in any other Enactment to the contrary notwithstanding. Unfortunately, the Magistrate of the First Class was superseded by the District Court set up by Ordinance No. 3 of 1946, s. 18 and sch. 4 thereof with similar powers to the old Court of First Class Magistrate. By virtue of ss. 20 and 21 of Ordinance No. 3 of 1946, the jurisdictional range and powers of punishment of the District Court were increased. The learned Deputy Public Prosecutor argued further that Laville J in delivering the judgment in *Ratnasamy's* case laid stress on s. 55 of the Excise Enactment No. 102 (9 of 1930 as amended by 16 of 1931), which according to the learned Deputy Public Prosecutor was in *pari materia* with s. 20 of Act 1971, and his Lordship came to the following conclusions:

> The wording of s. 55 of the Excise Enactment is however permissive and not obligatory, and the section was enacted in my view for the purpose of enabling the First Class Magistrate's Court to impose sentences which, owing to its power of punishment being limited, it could not otherwise impose.

Laville J continued further that:

> The powers of s. 55 of the Excise Enactment do not however oust the jurisdiction of a Magistrate's Court where offences under the Enactment fall within it.

Applying *Ratnasamy's* case (*supra*), the learned Deputy Public Prosecutor argued that the Magistrate's Court had jurisdiction to handle the case under the Peraturan 1973 and punishable under Act 1971 since s. 20 of Act 1971 is couched permissively and not obligatorily.

Section 55 of the Excise Enactment No. 102 (9 of 1930 as amended by 16 of 1931) is worded as follows:

> All prosecutions under this Enactment may be had before the Court of a Magistrate of the First Class; and such Court may impose any penalty provided by this Enactment, anything in any other Enactment to the contrary notwithstanding.

In comparing the provisions of s. 55 of the Excise Enactment No. 102 (9 of 1930 as amended by 16 of 1931) with that of s. 20 of Act 1971, the following differences are detected:

(1) Section 55 of the Excise Enactment uses the words:

> .... may be had before the Court of a Magistrate of the first class ...

whilst s. 20 of Act 1971 lays emphasis on the words:

> ... a Session Court is West Malaysia ... shall have jurisdiction to try any offence under this Act ..."

(2) Section 55 of the Excise Enactment uses the words:

> ... and such Court may impose any penalty provided by this Enactment ...

whilst s. 20 of Act 1971 speaks of:

> ... and to award full punishment for any such offence ...

Laville J was correct in construing the word 'may' in s. 55 of the Excise Enactment No. 102 (9 of 1930 as amended by 16 of 1931) as permissive. But in the context of s. 20 of Act 1971 the word 'shall' appearing therein reflects a measure of mandatoriness in it. It is my judgment that only the Sessions Court is vested with the jurisdiction to hear and dispose of the applicant's case upon a plain reading of s. 20 of Act 1971 for the simple reason that it is only the Sessions Court that is empowered to award the full punishment for such an offence. The words in s. 20 of Act 1971 are so plain and unambiguous that I have no choice but to interpret it as such. As Lord Diplock said:

> Where the meaning of the statutory words is plain and unambigous it is not for the Judges to invent fancied ambiguities...

(*Duport Steels v. Sirs* [1980] 1 ALL ER 529 at p. 541). Even if there is any ambiguity, which is not detectable here, the construction which is in favour of the freedom of the individual should be adopted (*David v. De Silva* [1934] AC 106 and *O'Connor v. Issacs* [1956] 2 QB 288). In my judgment, since the words in s. 20 of Act 1971 are themselves precise and unambiguous then one need not go any further than to expound those words in their ordinary and natural sense. Put in another way, the words themselves alone best declare the intention of the law giver (*Sussex Peerage Claim* [1844] 11 Cl. & F 85, 143 and *Cargo ex Argos* [1873] LR 5 PC 134, 153).

Parliament in its wisdom has enacted s. 20 of Act 1971 by vesting in the Sessions Court the jurisdiction to hear and dispose of the cases under Peraturan 1973 and Act 1971 and the Courts cannot import words into it as to give it a meaning different from what was intended by Parliament. It is quite normal to determine the intent of the law for the Court to look at a sentence from a purely grammatical point of view so that in construing a statute the Court will disregard a punctuation or will re-punctuate it if that be necessary, in order to arrive at the true purpose and natural meaning of the words employed. In the context of the present case, in construing s. 20 of Act 1971, there is no need to disregard a punctuation or to re-punctuate it as the words employed therein are clear and unambigous. *Ratnasamy's* case cannot persuade me to hold that the Magistrate's Court has the necessary jurisdiction to handle the applicant's case. Even the most skilful Counsel cannot make bricks without any straw (*Manchester Corporation v. Connolly* [1970] 1 ALL ER 961).

By way of an analogy, the pre-amended version of s. 128(3) of the Customs Act 1967 (Act 235) gave the power to the Sessions Court Judge in West Malaysia or Magistrate of the First Class in Sabah and Sarawak to decide, on receipt of a referral by the Director General, the ownership of the goods seized in respect of which there was no prosecution but claimed in writing within one calendar month from the date of seizure by any person asserting

ownership of such goods. But by an amendment in 1990 to be precise 30 August 1990 *vide* A783, the substituted s. 128(3) of the Customs Act, 1967 (Act 235) gave that jurisdiction only to the Magistrate of the First Class. Must the prosecution still follow the pre-amended position or the newly amended position when resorting to s. 128(3) of the Customs Act, 1967 (Act 235)? The answer is obvious. The prosecution must follow the newly amended version of s. 128(3) of the Customs Act, 1967 (Act 235).

For these reasons, the conviction and sentence imposed by the Magistrate's Court were quashed and an order for the return of RM2,000, if paid, was made. The orders for the forfeiture of (P2) and (P3) were set aside and the case was transferred to the Sessions Court, Johor Bahru for disposal. 21 December 1994 was fixed as the mention date before the Sessions Court, Johor Bahru.